U.S. Department Of Commerce Begins Autos Investigation Hearings

July 19, 2018

On July 19, 2018, the U.S. Department of Commerce ("Commerce Department") begins hearings into whether automotive and automotive parts imported from Canada and other U.S. trading partners threaten the national security of the United States. The investigation was announced on May 23, 2018 and covers "automobiles", which includes cars, SUVs, vans and light trucks, and their parts. The Commerce Department will ultimately submit a report to the President which may recommend the imposition of tariffs or other trade restrictive measures on imports of autos and auto parts. The negative consequences from a U.S. tariff to Canada's automotive industry would be immense.

Automakers, auto industry groups, and labour groups from the United States and around the world are scheduled to appear before the Commerce Department hearing panel. The full listing of parties scheduled to appear can be found on the Commerce Department document, Section 232 National Security Investigation of Imports of Automobiles and Automotive Parts Hearing Panel Schedule. Both the Government of Canada (Ambassador David MacNaughton) and the Government of Ontario (the Hon. Jim Wilson) will make submissions to the panel.

To date, the Commerce Department has received nearly 2300 public comments from governments, industry associations, and companies. From our review of their submissions, nearly all are strongly opposed to tariffs. GM's submission says tariffs will undermine its ability to compete and instead recommends finalizing renewed NAFTA and KORUS agreements. The EU, for its part, notes that EU companies produce 2.9 million automobiles in the United States (26 per cent of production) which account for 120,000 direct and upstream jobs as well as 420,000 downstream jobs. The EU strongly opposes the unilateral use of the WTO national security exemption calling it "an attempt to set aside the written condition of these exceptions and turn them into a unilateral right to ignore WTO obligations." We agree with the EU's analysis: the Section 232 tariffs would be illegal under international law and potentially U.S. domestic law.

The previous Section 232 investigation took almost 11 months to move from the commencement of the investigation to the imposition of tariffs. The investigation into autos has thus far progressed as a slower pace, but that is not necessarily indicative of what is to come in future months. The Trump administration has made trade protectionism central to its objectives and considers tariffs to be one of its major

achievements. With important midterm elections to take place in mid-November it would not be a surprise to see the Section 232 automotive investigation accelerated.

Duty Deferral and Duty Drawback May Provide Relief

If the U.S. imposes tariffs on autos and auto parts and Canada retaliates with tariffs on U.S. origin autos and auto parts, there may be limited relief for importers provided by the Canada Border Services Agency ("CBSA") duty deferral and duty drawback programs. NAFTA limits the amount of duties refundable under these programs. Duties cannot exceed the lesser of the amount of duties owed on import into Canada and the amount of duties paid upon export to a NAFTA country.

The CBSA offers relief to importers whose goods are subject to the retaliatory tariffs imposed by the Government of Canada on U.S. origin goods through its Duty Relief Program and its Duty Drawback Program. The programs are designed for Canadian importers and manufacturers and provide relief against Canadian retaliatory tariffs on U.S. steel and aluminum that may be used in processing automobiles manufactured for export, but will not provide relief against any future U.S. Section 232 surtaxes.

Duty Relief

Under the Duties Relief Program, an importing company may import goods without paying duties, if those same goods are later exported or the goods are manufactured or used in Canada prior to export.

An importer must apply to the CBSA Duties Relief Program and, amongst other information, must specify the goods intended for import and the main products manufactured or sold for export. If the goods are manufactured, the details of the manufacturing process are also required.

An importer must also ensure it has compliance programs in place to track goods, pay necessary duties if the goods no longer qualify for duty relief and to ensure that goods are exported within four years. Goods can be sold or transferred before export, but the new owner of the goods must be a Duties Relief Program participant.

Duty Drawback

An importer may qualify for a drawback (*i.e.,* refund of customs duties) if the goods are eventually exported, if the goods are manufactured and later exported or if the goods are destroyed because they are obsolete or surplus. To claim a drawback, an importer must complete the requisite form and make the claim within four years.

Drawbacks can be claimed for duties paid on imported automobiles, materials used in Canadian processing of an automobile or goods consumed or expended in processing of automobiles subsequently exported. Not all automobiles qualify for drawback and fuel and plant equipment are also exempt from drawbacks.

How We Can Help

As the global trade war heats up, autos and auto parts have been moved to the forefront of the battle. To better serve our clients, BLG recently brought over three of the most talented trade law experts in Canada, their associate lawyers, and staff – Jesse Goldman, Milos Barutciski, and Matthew Kronby joined the firm in May. You can read about them here: *Leading International Trade Team Joins BLG*. Our trade experts continue to monitor developments and keep our clients in the know. We recognize that trade issues are top of mind for many of our automotive clients and BLG has positioned itself to provide you with legal advice in this area that is unparalleled in experience and scope in Canada to meet the business critical needs of our clients.

By

Jacob Mantle, Jesse Goldman

Expertise

International Trade & Investment, Automotive

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription

preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.